

LEGAL



Q and A with
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Q: If we want to paint the building a different color, do we need a vote of the members?

A: It depends. The decisions from the Florida appellate courts apply a very broad standard in defining what kinds of alterations are “material” and what kind of additions are substantial. In *Stirling Village Condominium, Inc. v. Breitenbach*, the court defined material alterations or substantial additions as those which “palpably or perceptively varies or changes the form, shape, elements or specifications of a building (i.e., common elements) from its original design or plan, or existing condition, in such a manner as to appreciably affect or influence its function, use, or appearance.” In the subsequent case, *Islandia v. Vermut*, the court held that changing the color of a building was a material alteration.

Section 718.113(2)(a), Florida Statutes, provides that you first look to

your declaration of condominium for the requisite vote and, if the declaration is silent, then the approval is by 75 percent of the total voting interest. Therefore, if the text of the declaration allows the Board to decide on the color of the building, then a unit owner vote is not required. If the Declaration has a threshold, based on the cost of the painting project, a vote may be required if the cost exceeds whatever threshold is provided. In some cases, the declaration will just tell you to obtain a vote of the membership.

Q: A renter wants to inspect our official records; do we have to grant him that access?

A: It depends on which records the tenant is seeking to inspect. The statute was amended a few years ago to include the following language on this topic: “A renter of a unit has a right to inspect and

copy only the declaration of condominium, the association’s bylaws and rules, and the inspection reports described in ss. 553.899 and 718.301(4)(p).” The statutory references are to the mandatory milestone inspection report and the turnover (from Developer to Unit owner) inspection reports which include the structural integrity reserve study. Renters may access these reports.

Q: Is there something else we are required to do besides the Board Certificate Class?

A: Yes. In addition to taking the 4-hour Board Certification Class, Board members must submit to the secretary of the association, in writing, that he or she has read the association’s declaration of condominium, articles of incorporation, bylaws, and current written policies and that he or she will work to uphold such documents and poli-

cies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association’s members. Directors must also annually submit to the secretary of the association a certificate of having satisfactorily completed at least 1 hour of continuing education relating to any recent changes to the Condominium Act and the related administrative rules during the past year. If the governor signs the new laws, there will be a lot to cover in the one-hour class next year.

Mark D. Friedman, B.C.S. is recognized by the Florida Bar as a specialist in condominium and planned development law. This article is intended for educational purposes only and is not intended as legal advice. Please consult with your own legal counsel if any of the issues discussed arise in your community. Mr. Friedman may be reached at MFriedman@BeckerLawyers.com.

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